

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1024 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

G S R T CORPN

Versus

CHANUBHAI H PATEL

Appearance:

MR HARDIK C RAWAL for Petitioner
MR BG JANI for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 03/05/99

ORAL JUDGEMENT

1. The Gujarat State Road Transport Corporation, the petitioner herein has filed the present petition under Article 227 of the Constitution of India, challenging the judgment and award dated 20.3.1997 passed by the Labour Court, Surat in Reference (LCS)No.587 of 1989 directing the petitioner-Corporation to reinstate the respondent workman to his original post with continuity of

service and 10% of the backwages. The services of the respondent- workman have been terminated on the ground of his remaining absent from 9.9.1988 to 23.9.1988 and 24.9.1988 to 17.11.1988. It appears that the respondent workman has also remained absent even in the inquiry held against him. The Labour Court, after considering the material on record, found that the punishment of dismissal is quite disproportionate to the proved misconduct and, therefore, the Labour Court exercised powers under section 11-A of the Industrial Disputes Act and passed an order of reinstatement of the workman.

2. After having heard Mr. Raval, the learned advocate appearing for the Corporation, I am of the view that no interference is called for in the matter especially when the extreme penalty is not warranted even if the misconduct is proved against the respondent workman. However, considering the past defaults of the respondent- workman, it appears that the respondent is a habitual defaulter inasmuch as he has committed similar misconduct of remaining absent on many occasions. Therefore, some penalty is required to be imposed. Unfortunately, even though the Labour Court has observed that the respondent- workman is guilty of committing similar misconducts, has not inflicted any penalty. It is true that 90% of the backwages have been denied to the respondent. In my opinion, considering the facts and circumstances of the case, the respondent- workman is not entitled to even 10% of the backwages. By granting the remaining 90% of the backwages, it will amount to paying premium for absenteeism. In this view of the matter, the petition is partly allowed. The order of reinstatement with continuity of service passed by the Labour Court is confirmed. However, the order granting 10% of the backwages to the respondent- workman is set aside. The petitioner- Corporation is directed to reinstate the respondent- workman with continuity of service without backwages on or before 1.6.1999. Rule is made absolute accordingly with no order as to costs. Direct Service.

sonar/-